



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/5/Add.29
26 December 1991

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

LUXEMBOURG

[15 October 1991]

I. INFORMATION OF A GENERAL NATURE

1. The prohibition and elimination of torture and other cruel, inhuman or degrading treatment or punishment, guaranteed under the Convention, are ensured in the Grand Duchy of Luxembourg by the following instruments:

- The United Nations Convention, approved by an Act of 31 July 1987;
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (art. 3), approved by an Act of 22 June 1988;
- The Universal Declaration of Human Rights (art. 5);
- The International Covenant on Civil and Political Rights (art. 7), approved by an Act of 3 June 1983;

- The European Convention for the Protection of Human Rights and Fundamental Freedoms and, in particular, its articles 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" and 4, paragraphs 1: "No one shall be held in slavery or servitude" and 2: "No one shall be required to perform forced or compulsory labour". This Convention was approved in Luxembourg by an Act of 29 August 1953;
- Lastly, national legislation in the civil, administrative and, more especially, criminal fields.

2. Thus, torture and cruel treatment are punishable under the Luxembourg Penal Code by virtue either of a direct reference to torture or of provisions governing wilful infliction of bodily harm. Furthermore the criminal law of Luxembourg precludes all cruel, inhuman or degrading punishment.

3. By an Act of 22 June 1988 the Grand Duchy of Luxembourg approved the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment signed at Strasbourg on 26 November 1987. The European Convention can be considered to be broader in its scope than the United Nations Convention in that it sets out to institute an effective system for the prevention of torture.

4. It should be pointed out that international standards always take precedence in the legal system of Luxembourg over national rules, even those post-dating them. International standards form an integral part of the law and are directly applicable provided their text lends itself to that purpose. Thus, our jurisprudence holds that ordinary international conventions in respect of which an Act of approval has been adopted can have direct effect.

5. By way of example, reference may be made to the following decisions: Court of Cassation, 17 January 1985, No. 2/85, Engel/Engel concerning the European Convention of 1950; Luxembourg Circuit Court, 30 October 1989, No. 832/89, concerning the same Convention and the International Covenant on Civil and Political Rights; Council of State, 21 March 1990, No. 8300 concerning the European Convention of 1950; and Court, 2 May 1985, vol. 26, p. 273, concerning an ILO Convention.

6. The provisions of the United Nations Convention, as of any other international convention, may thus be invoked before judicial courts (dealing with civil, commercial, social or criminal matters) and administrative courts (dealing with acts of the public administration), or before the Administration itself by private individuals, either directly in order to ensure their enjoyment of a right guaranteed under a convention or, exceptionally, in order to prevent an infringement of their rights.

7. Any victim of torture or cruel or inhuman treatment has the right to bring proceedings against the perpetrator of the crime. The victim can lodge a complaint with an officer of the criminal investigation service, who then proceeds to conduct a preliminary enquiry; the officer must inform the State Prosecutor without delay of any violation (crime, offence or infringement of the law) that comes to his knowledge. The victim may also lodge a complaint accompanied by the bringing of criminal indemnification proceedings with an

examining magistrate of one of the circuit courts of the Grand Duchy. In this case the magistrate must immediately open a judicial enquiry and investigate the case within the time-limits prescribed by law.

II. INFORMATION RELATING TO EACH OF THE ARTICLES
IN PART I OF THE CONVENTION

Article 1

8. This article establishes the scope of the Convention by defining the term "torture". In paragraph 2, the Convention does not preclude the possibility of applying international or national provisions of wider application. This reference to international law is justified by the fact that, in particular, article 5 of the Universal Declaration of Human Rights of 10 December 1948 expressly prohibits cruel or inhuman punishment. Inhuman punishment is likewise prohibited in article 3 of the European Convention. All the above instruments have been ratified by Luxembourg. It should be pointed out that the term "torture" is not defined expressis verbis either in the Constitution of Luxembourg or in the legislative texts.

Article 2

9. This article requires the State to take measures to prevent acts of torture in its territory. Torture and cruel treatment are punishable under the Penal Code of Luxembourg by virtue either of a direct reference to torture or of provisions governing wilful infliction of bodily harm. Thus, article 257 of the Penal Code condemns abuse of authority, i.e. all direct or indirect use of violence against individuals, without legitimate grounds, by a public official or officer. The text of article 257 reads as follows:

"When a public official or officer, an administrator, agent or representative of the Government or of the police, or a judicial marshal or police commandant or deputy commandant has, without legitimate grounds, used or authorized the use of violence against persons in the exercise of or in connection with the exercise of his duties, the minimum penalty for such acts shall be increased in accordance with article 266."

10. Other cases listed in the Convention are governed by provisions of ordinary law designed to protect physical integrity (wilful infliction of bodily harm). The provisions concerned are, in particular, articles 398 to 401 bis of the Penal Code, which read as follows:

Article 398. "Anyone wilfully wounding or striking shall be punished by from eight days to six months of imprisonment and a fine of from 2,501 francs to 10,000 francs, or with only one of those penalties.

If the act was premeditated, the offender shall be sentenced to imprisonment for a period of from one month to one year and to a fine of 5,000 francs to 20,000 francs."

Article 399. "If the striking or wounding have caused illness or disability, the offender shall be punished by from two months to two years of imprisonment and a fine of from 5,000 francs to 20,000 francs.

The offender shall be punished by from six months to three years of imprisonment and a fine of from 10,000 francs to 100,000 francs if he acted with premeditation."

Article 400. "If the striking or wounding resulted either in apparently incurable illness or in permanent disability, or loss of absolute use of an organ, or severe mutilation, the penalties shall be imprisonment for from two years to five years and a fine of from 20,000 to 50,000 francs.

If the act was premeditated, the sentence shall be one of imprisonment."

Article 401. "Where blows struck or wounds inflicted wilfully but without intent to kill have nevertheless caused death, the offender shall be punished by imprisonment.

If these acts of violence were premeditated, the penalty shall be a period of 10 to 15 years of hard labour."

Article 401 bis. "Anyone who has wilfully wounded or struck a child below the age of 15, or has wilfully deprived a child of food or care to the point of endangering its health, or who has committed any other act of violence or assault against it with the exception of minor acts of violence, shall be punished by imprisonment of from one to three years and a fine of from 2,501 francs to 25,000 francs.

If any of the acts of violence or privation listed above has resulted in an illness or personal disability, or if the act was premeditated, the penalties shall be imprisonment for three to five years and a fine of from 2,501 to 50,000 francs.

If the offenders are the child's legitimate father and mother, whether natural or adoptive, or other legitimate forebears, or any other person having authority over the child or having it in their care, the penalties in the absence of any ensuing illness, disability or premeditation shall be as set forth in the preceding subparagraph; in the contrary case, a sentence of imprisonment shall be pronounced.

If acts of violence or privation have been followed, either by an apparently incurable illness, or by permanent disability, or by loss of the absolute use of an organ, or by severe mutilation, or have resulted in death without intent to kill, the penalty shall be one of hard labour for a period of 10 to 15 years, and if the offenders are persons referred to in the preceding subparagraph, one of hard labour for life. If the acts of violence or privation were performed with intent to kill, the perpetrators shall be punished as being guilty of murder or attempted murder.

If acts of violence or privation, habitually performed, have led to death, even without intent to kill, the offenders shall receive sentence of death."

11. In other provisions, torture is viewed as an aggravating circumstance in connection with an offence such as, for example, extortion or robbery with violence or with threats (art. 472 of the Penal Code). Article 473 reads as follows:

"In the cases referred to in articles 468, 469, 470, 471 and 472, the penalty shall be from 15 years to 20 years of hard labour if the acts of violence or threats have caused apparently incurable illness, or permanent disability, or loss of the absolute use of an organ, or severe mutilation.

The same penalty shall be applied if the offender has inflicted physical torture upon a person."

It should be noted that article 473 covers acts of violence and threats as well as other acts of physical torture; its scope is thus the same as that of article 1 of the Convention, which also covers any act by which severe pain or suffering, whether physical or mental, is inflicted.

12. Among the provisions relating to infringements of the liberty of the person committed by individuals, article 438 of the Penal Code condemns physical torture inflicted upon a detained person. The article reads as follows:

"When the arrested or detained person has been subjected to physical torture, the offender shall be punished with from 10 years to 15 years of hard labour.

If the acts of torture have resulted in an apparently incurable illness, or permanent disability, or loss of the absolute use of an organ, or severe mutilation, the penalty shall be from 15 years to 20 years of hard labour.

If the acts of torture have caused death, the offender shall be sentenced to hard labour for life."

13. Lastly, to complete the picture, mention may be made of the following special Acts:

(a) Article 49 of the Act of 31 December 1982 concerning the review of the Military Penal Code, which reads as follows:

"Any member of the military forces who strikes a subordinate, unless acting in legitimate self-defence, stemming flight in the face of the enemy, or preventing looting or destruction of property, shall be punished by a term of imprisonment of from two months to three years.

If the blows dealt have caused one of the consequences referred to in articles 399, 400 and 401 of the Penal Code, the penalties imposed shall be those provided for under those articles."

(b) Article 47 of the Royal Decree of 30 January 1815 concerning the mounted constabulary, which reads as follows:

"All members of the mounted constabulary shall be expressly prohibited from inflicting any ill-treatment upon arrested persons, or from employing any act of violence against them, unless there be resistance or rebellion, in which case alone they shall be authorized to resort to force while resisting acts of violence committed against them in the exercise of their duties."

(c) Article 7 of the Act of 16 April 1979 concerning discipline in the police force and article 10 of the Act of 17 July 1973 concerning the use of weapons and other means of constraint by members of the police force. These two articles provide that members of the police force may not carry out an order if so to do would constitute a crime or an offence.

(i) Article 7 of the Act of 16 April 1979 reads as follows:

"Obedience shall be prompt, faithful and conscientious. If, owing to unforeseen circumstances, an order cannot be carried out in a regular manner, the officer required to execute the order shall immediately inform the officer issuing the order. If such information cannot be given and in case of urgent need, the officer must take appropriate steps on his own initiative, being guided by the intentions of the officer issuing the order.

Obedience to an order whose execution constitutes a crime or an offence shall be prohibited. The execution of such an order entails the liability of the officer carrying out the order if he cannot fail to realize that by obeying the order he will become party to a criminally punishable act. Refusal to carry out an order which is incompatible with human dignity or which is unrelated to police duties shall not constitute an act of disobedience. An officer's failure to appreciate the nature of the order shall not constitute an excuse."

(ii) The text of article 10 of the Act of 17 July 1973 reads as follows:

"If a police officer in the exercise of his duties receives from his superior officer an order to employ weapons or any means of coercion, the order shall be carried out, unless it is unrelated to the performance of the former officer's duties.

The order must not be carried out if its execution would constitute a crime or an offence.

If, in that case, the order is nevertheless carried out, the executing officer shall incur liability only if he knew, or could have known in the light of the circumstances, that a crime or offence was manifestly involved.

The executing officer must, if circumstances permit, make known his objections concerning the lawfulness of the order received to the officer issuing the order."

Article 3

14. This article prohibits the expulsion, turning back or extradition of a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or similar ill-treatment. The entry of aliens into Luxembourg and their stay therein are governed by the Act of 28 March 1972 and the Grand Ducal Implementing Regulations of the same date. These instruments set forth the principles concerning residence of all aliens and the obligations with which they must comply. Article 13 of the Act provides that expulsion may be ordered by the Minister of Justice.

15. Article 7 of the Act of 13 March 1870 on the extradition of foreign offenders, as well as article 3 of the European Convention on Extradition of 13 December 1957 approved by the Act of 21 July 1976, preclude extradition in respect of a political offence or of an act connected with such an offence.

(a) Article 7 of the Act of 13 March 1870 reads as follows:

"It shall be expressly stipulated in these treaties that the alien cannot be prosecuted or punished for any political offence committed prior to extradition, or for any act connected with such an offence, or for any crime or offence not provided for by the present act; extradition or provisional arrest in any of the above cases shall be prohibited.

An attempt upon the life of the Head of a foreign Government or members of his family shall not be deemed a political offence if the attempt constitutes an act of murder, assassination or poisoning."

(b) Article 3 of the European Convention on Extradition reads as follows:

"1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.

4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character."

It is reasonable to suppose that, in the majority of cases, inhuman treatment which the Convention condemns is inflicted in connection with offences of this type. Exclusion clauses of the same type are to be found in

the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, approved by the Act of 21 July 1976, or the Benelux Treaty on Extradition and Mutual Assistance in Judicial Matters of 27 June 1962, approved by the Act of 26 February 1965.

Article 4

16. This article deals with the scope and gravity of penalties. Infliction of bodily harm is punished under article 398 of the Penal Code. According to the article, anyone wilfully inflicting wounds or striking blows shall be punished by imprisonment for from eight days to six months and a fine of from 2,501 francs to 10,000 francs, or only one of those penalties. If the act was premeditated, the offender shall be sentenced to from one month to one year imprisonment and to a fine of from 5,000 francs to 20,000 francs.

17. In addition, the subject-matter of the Convention is covered more specifically in article 438 of the Penal Code. This article provides as follows:

"If the arrested or detained person was subjected to physical torture, the offender shall be punished by hard labour for 10 years to 15 years.

If the torture inflicted has resulted in apparently incurable illness, permanent disability, or loss of the absolute use of an organ, or serious mutilation, the penalty shall be hard labour for 15 years to 20 years.

If the torture inflicted has caused death, the offender shall be sentenced to hard labour for life."

Since such offences are qualified as crimes, attempt and complicity in connection with them are likewise prosecuted in the person of the accomplices and co-perpetrators.

Article 5

18. Under this article the States parties to the Convention are required to take such measures as may be necessary to establish their jurisdiction over the offences covered by the Convention in accordance with the principles of territoriality or of the nationality of the alleged offender or the victim. Each State Party must take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in its territory and it does not extradite him.

19. In connection with paragraph 1 of the article it should be noted that, by virtue of the principle of territoriality in criminal law, the criminal law of Luxembourg applies, in the absence of any formal statement to the contrary, to any Luxembourg or foreign national who is present, for whatever reason, in the territory of the Grand Duchy. Thus, all proceedings under civil or criminal law arising from acts constituting offences committed in the territory of the Grand Duchy fall within the scope of the law of Luxembourg, in accordance of article 3 of the Penal Code which provides that offence committed in the

territory of the Grand Duchy by Luxembourg citizens or by aliens shall be punished in conformity with the provisions of the laws of Luxembourg. Accordingly, the Luxembourg courts have jurisdiction provided that one of the constituent elements of the offence occurred in Luxembourg territory.

The rules governing punishment for offences committed by Luxembourg citizens abroad are set forth in article 5 of the Code of Criminal Investigation, which reads as follows:

"Any Luxembourg national who has, outside the territory of the Grand Duchy, committed a crime punishable under Luxembourg law, can be prosecuted and tried in the Grand Duchy.

Any national of Luxembourg who has, outside the territory of the Grand Duchy, committed an act qualified as an offence under Luxembourg law can be prosecuted and tried in the Grand Duchy.

However, except in the case of crimes and offences committed in wartime, no proceedings shall be instituted in the case of a crime or an offence if the accused person has been tried for the same offence in a foreign country and has been acquitted.

The same shall apply if, having been tried and convicted, he has served his sentence, or the punishment has been time-barred, or he has been pardoned.

Any period of detention served abroad in consequence of the offence which gives rise to a conviction in the Grand Duchy shall be set against the period of any custodial sentence."

21. In the event of offences committed against a private individual who is a Luxembourg or foreign national, proceedings can be instituted only at the request of the Public Prosecutor; they must be preceded by a complaint brought by the victim or his family, or by an official accusation brought before the Luxembourg authorities by the authorities of the country where the offence was committed, or, if the offence committed abroad was committed in wartime against a national of a country allied with Luxembourg within the meaning of article 117, paragraph 2 of the Penal Code (Grand Ducal Order of 14 July 1943), by the authorities of the country of which the person against whom the offence was committed is or was a national.

22. Similarly, a Luxembourg national who has committed abroad one of the offences provided for in articles 198 (forgery of documents), 199 (use of false names or titles), 379 bis (procuring), 382 (soliciting) and 383 (indecent exposure) of the Penal Code can be prosecuted and judged in the Grand Duchy even if the act is not punishable under the laws of the country in which it was committed and if the Luxembourg authorities have received neither a complaint from the offended party nor an accusation from the authority of the country in which the offence was committed. An alien who is a co-perpetrator or an accomplice to a crime committed by a Luxembourg national outside the territory of the Grand Duchy can be prosecuted in the Grand Duchy together with the Luxembourg national accused of the crime or after his conviction.

Article 6

23. Under this article, the State party in whose territory a person alleged to have committed an offence is present must, if it considers that the circumstances so warrant, take appropriate steps to prevent the perpetrator from escaping prosecution or extradition. Luxembourg complies with this requirement and provides for an immediate preliminary inquiry into the facts.

24. Thus, in accordance with the bilateral and multilateral extradition conventions to which Luxembourg is a party, the person to be extradited can be provisionally arrested on the strength of a court decision. Paragraph 4 of article 16 of the European Convention on Extradition approved by Luxembourg provides that provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition; that period shall not, in any event, exceed 40 days from the date of arrest. Paragraph 3 of article 6 of the United Nations Convention is complied with in Luxembourg except where the person in custody is being held incommunicado under a decision of the examining magistrate.

Article 7

25. This article requires the State in whose territory a person alleged to have committed any offence referred to in article 4 is found either to extradite or to judge him. It is true that criminal prosecution by a State other than that in whose territory the acts of torture were perpetrated will often be hampered by difficulty in obtaining sufficient evidence to convict the perpetrator of the offence upon the conclusion of proceedings during which fair treatment is guaranteed. That is why article 7 contains provisions which specify the standards of evidence required and guarantee fair treatment of the alleged perpetrator of acts of torture at all stages of the proceedings.

26. If the State where the act of torture was committed demands extradition, it may obtain it under the mechanism established in Luxembourg by the Act of 13 March 1870 on the extradition of foreign offenders. Luxembourg courts do not, generally speaking, have jurisdiction over offences committed outside the national territory.

27. With regard to paragraph 2 it should be noted that the standards of evidence required for prosecution and conviction are the same as under paragraph 1 of article 5. In Luxembourg, the alleged perpetrator of the offence enjoys fair treatment at all stages of the proceedings in conformity with paragraph 3 of article 7.

Article 8

28. It should be recalled that Luxembourg is a party to a number of multilateral conventions on extradition, including the European Convention on Extradition of 13 December 1957, referred to above, approved by an Act of 21 July 1976. In addition, Luxembourg has signed bilateral agreements with Australia, the United States, Great Britain, etc. Furthermore, a treaty on extradition and mutual aid in criminal matters, dated 27 June 1962, exists between the Benelux countries. It should be noted that Luxembourg permits extradition even in the absence of express agreement between the two States

concerned. Moreover, since the entry into force of the Act of approval the Convention against Torture can serve as an extradition treaty with States signatories of the Convention.

Article 9

29. Under this article the States parties undertake to afford one another the greatest measure of assistance, in particular as regards the supply of evidence. Legal mutual assistance is possible only in conformity with existing treaties. Luxembourg forms part of an extensive network of legal mutual assistance in criminal matters; thus, Luxembourg has ratified the European Convention on Mutual Assistance in Criminal Matters signed on 20 April 1959 and approved by an Act of 21 July 1976. Reference may also be made in this context to the above-mentioned treaty on extradition and mutual legal assistance between the Benelux countries.

30. Furthermore, articles 58 and 59 of the amended Act of 7 March 1980 on the organization of the legal system set forth the conditions for the sending of letters of request for the purpose of evidence being taken. Thus, Luxembourg judges can address letters of request even to foreign judges unless another method of transmission has been agreed with the country of destination. Except in connection with obligations resulting from international treaties, judges may comply with letters of request emanating from foreign judges only if they are authorized so to do by the Minister of Justice, in which case compliance is mandatory.

Article 10

31. Under this article, States are required to include education and information regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the training of all persons, civil or military, who may be involved in dealing with persons deprived of their liberty.

32. The amended Luxembourg Constitution of 17 October 1868 provides in its article 11 that the State shall guarantee the natural rights of the individual and of the family. Furthermore, no one shall be prosecuted otherwise than in cases and according to the procedure laid down by the law (art. 12, para. 2). Torture or cruel and inhuman treatment practised by State officials or police officers are subject to increased penalties under article 257 of the Penal Code, which reads as follows:

"When a public official or officer, an administrator, agent or representative of the Government or of the police, or a judicial marshal or police commandant or deputy commandant has, without legitimate grounds, used or authorized the use of violence against persons in the exercise of or in connection with the exercise of his duties, the minimum penalty for such act shall be increased in accordance with article 266."

Thus, the minimum penalty is doubled in the case of imprisonment and increased by two years in the case of rigorous imprisonment, detention or hard labour.

33. In Luxembourg, the fundamental principles of democracy and respect of human rights are taught and have to be observed at all levels of society, including schools, universities, vocational establishments and, in particular, the army and other policing bodies.

Article 11

34. Officers of the criminal investigation service may summon and interrogate any person likely to be able to give information concerning crimes, offences or infringements known to them. The persons thus summoned are obliged to appear. If they fail to do so, the State Procurator may use the forces of law and order to compel them to appear (art. 38 of the Code of Pre-Trial Proceedings).

35. If the interests of the investigation so require, persons against whom there are serious and concordant indications such as may constitute grounds for bringing a charge can, with the authorization of the State Procurator, be detained by an officer of the criminal investigation service for a period not exceeding 24 hours. The period of 24 hours starts when the person is actually detained by the police. Unless the interests of the investigation militate against it, the detained person may send a message to an individual of his or her choice. The State Procurator can order the necessary identification procedures, and in particular the taking of fingerprints and photographs of the detained person. If the detained person is suspected of concealing objects that may be useful in ascertaining the truth or objects that may be dangerous to themselves or others, a body search may be performed by a person of the same sex. The State Prosecutor can at any moment, ex officio or at the request of the detained person or of a member of their family, designate a physician to examine the detained person. Before proceeding to the interrogation, the officers and agents of the criminal investigation service must inform the person to be interrogated of their right to be assisted by counsel chosen from among the appropriate panel of lawyers. The records shall indicate the duration of the interrogations to which the detained person was subjected and of the rest periods between those interrogations, the date and time at which he or she was detained and the day and time from which he or she was either released or brought before the examining magistrate (art. 39 of the Code of Pre-Trial Proceedings).

Article 12

36. In Luxembourg, an investigation is ordered ex officio by the Public Prosecutor's Office in the event of an allegation of beating or ill-treatment by police officers or agents.

Article 13

37. Luxembourg legislation provides that all officers of the criminal investigation service, including even investigating magistrates, shall be subject to supervision by the Procurator General (art. 279, para. 1 of the Code of Pre-Trial Proceedings). In the event of negligence, for example, the Procurator General will issue a warning which will be recorded by him in a register kept for that purpose (art. 280). In the event of a recurrence, the Procurator General will report the officers concerned to the court, which will summon them to appear before a judge in chambers (art. 281, para. 1 of the Code of Pre-Trial Proceedings).

Article 14

38. Under this article the State must ensure that the victim of an act of torture has the right to obtain redress and to receive fair and adequate compensation. Thus, the victim of such an offence will have a right to fair compensation for the material and moral prejudice suffered. The compensation will include medical and hospitalization expenses, loss of earnings or pension, the pretium doloris, rehabilitation costs, etc. In the event of the death of the victim, his dependents shall be entitled to compensation for the material and moral prejudice caused by their loss. Such compensation shall endeavour to place the injured party in the situation that would have obtained on the day on which redress was ordered had the offence not been committed.

Article 15

39. It is a principle of case law, firmly established in Luxembourg courts, that judges cannot consider any evidence obtained by wrongful or unfair methods. This principle is illustrated, in particular, by a Court decision of 26 June 1972 (Pasicrisie, 22.216). The decision reads as follows:

"Whereas it is a matter of principle that judges may not consider evidence obtained by wrongful or unfair means;

More especially, whereas, if it is demonstrated that a letter produced before the court was obtained in an irregular manner, that letter must be deleted from the record together with anything consequent upon it; ..."

Article 16

40. This article supplements article 1 in that it condemns acts similar to those covered by the Convention.
